IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8669 OF 2006

Ramdas V. Shirsat ....Petitioner
V/s.
Ramdas V. Tawate ....Respondent

Mr.N.V. Walawalkar, Senior Counsel with Mr.G.H. Keluskar for the Petitioner.

Mr.C.G. Gavnekar for the Respondent.

CORAM : S.J. VAZIFDAR, J.
DATED : 2ND FEBRUARY, 2007.

P.C. :

1. Rule. Rule returnable and heard forthwith.

2. Prima-facie it appears that the order dated 29.12.2006 was violated. Prima-facie it also appears that the statement as recorded in the order dated 12.1.2007 was incorrect.

3. However, in view of the statement made on behalf of the Respondent, I do not intend taking any action at this stage in respect thereof. This would not prevent the Petitioner from taking such action as he may deem fit/necessary. Mr.Gavnekar, the learned counsel appearing on behalf of the Respondent states

that a Civil Engineer may be appointed by the trial Court for the purpose of constructing the retention wall to ensure that any construction that may be carried out by the Respondent shall not affect the Petitioner's construction/property in any manner whatsoever. He states that the costs of the construction of the said wall including the fees of the Civil Engineer shall be paid entirely and unconditionally by the Respondent. He however states that till the retention wall is constructed to the satisfaction of the Civil Engineer and to the satisfaction of the trial Court, no further construction of any nature shall be carried out on any portion of the Respondent's plot. The statements and undertakings are accepted. It is clarified that the construction by the Respondent shall recommence only upon permission being obtained from the trial Court after the Civil Engineer makes a report regarding completion of the retention wall.

4. The parties are at liberty to make an application before the trial Court for the above purpose. The Respondent is present in Court personally.

5. I cannot part with this order without

observing that in a case such as this when the injunction was vacated, the learned Judge ought to have continued the order granted by the trial Court at least for some time in view of the fact that the impugned order was not even made available to the Petitioner.

6. The impugned order is therefore set-aside.

7. The Rule is made absolute accordingly.